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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.646 OF 1993

Raj Nair, residing at Flat)
21-22, 2nd Floor, Heena, 1st)
Road, Khar (W), Bombay-400 052)..Petitioner

Versus

1. S.K. Laul)
2. S.C. Tiwari,)
3.C.M. Betgeri,)
All memebtrs of Appropriate)
Authority constituted under)
Chapter XX-C of the Income-tax)
Act, 1961 having their office)
at Mittal Court, A-Wing, 3rd)
Floor, Nariman Point,)
Bombay-400 021.)
4.Union of India)

Mr.A.K. Jasani i/b. Niranjan Jagtap & Co., for the petitioner.

Mr. R. Ashokan, for the respondents.

**CORAM: F.I. REBELLO &
J.P.DEVADHAR, JJ.**

DATED: 7TH AUGUST, 2007

JUDGMENT: (PER F.I. REBELLO, J.)

. The petitioner was the owner of the flat and by Agreement entered into on 30th June, 1992 agreed to sell the said property namely Flat No.2, Shyam Sadan, 93, Ghod Bunder Road, S.V. Road, Khar (West), Bombay-400 052 admeasuring 870 sq. ft. carpet area. The Respondent Nos. 1 to 3 served notice under Section 269UD(1) of the Income-tax Act. The petitioner is not challenging the action of respondent Nos. 1 to 3 in purchasing the property.

The petitioner, however, challenges the action of Respondent No.s 1 to 3 of discounting the amount of apparent consideration by a sum of Rs.40,291/- and further action of retaining a sum of Rs.14,251/- towards the liability of the Vendor for payment of transfer fees to be paid to the society. Though there was a challenge to the provisions of Section 269UA(6) as violative of Article 14 of the Constitution that has not been pursued, considering subsequent judgments.

. The disputed amounts, therefore, are:-

(i) Rs.40,291/- towards discounting.

(ii) Rs.14,251/- towards transfer fee.

2. The respondents had passed an order under sub-section (1) of Section 269UD dated 27th August, 1992. The Tribunal noted that by the Agreement of 30th June, 1992, Rs.2,35,111/- was paid as earnest money and a sum of Rs.21,15,000/- was to be paid within a period of 30 days from the receipt of N.O.C. under Section 269UN (3) of the Income-tax Act 1961. The Members of the Appropriate Authority observed that as that payment was deferred for three months, in terms of provisions of Section 269UA(b) read with Rule 48-1 by an amount had to be

discounted for three months and thus worked out to Rs.40,291/- and thus the compensation payable was Rs.23,09,820/- out of Rs.23,50,111/-.

. The Appropriate Authority also considering Clause (15) held that the vendor is to bear 50% transfer fee payable for transfer of the shares and worked out the sum of Rs.14,251/- and retained the said amount in the account of the Appropriate Authority towards vender's liability for payment of transfer fees.

. A reply has been filed on behalf of the respondents. It is really not necessary to set what is stated in the said affidavit, as what has been argued are purely questions of law.

3. The 1st question that has to be considered is what is the date that has to be considered for the purpose of discounting. In our opinion that issue is no longer res integra. A learned Division Bench of this Court in Shrichand Raheja and Anr. vs. S.C. Prasad (Appropriate Authority) & Others, 213 ITR 33 had taken a view that discounting of value is to be determined for the period commencing from the date on which the balance consideration was payable under the agreement between the parties and that it was not open to the Appropriate Authority as

contended by the Revenue to ascertain the discounted value from the date of the Agreement. This issue came up for consideration before the Supreme Court in Ramesh Bhai J. Patel vs. Union of India, 247 ITR 182. The Supreme Court considered the judgment in Shrichand Raheja & Anr. (supra) and observed as under:-

"We are unable to agree. The High Court appears to have overlooked the purpose of Chapter XX-C and the definition of "apparent consideration" thereunder. The purpose is to determine whether immovable property has been sought to be transferred at an undervaluation. To determine whether there has been an undervaluation, the true consideration for the transfer has to be determined and, necessarily, it has to be determined as on the date of the agreement for transfer. That this is so is clear from the latter part of clause (b), which we have quoted; the phrase "the discounted value of such consideration as on the date of such agreement for transfer" therein indicates the point of time from which the period for discounting must be calculated."

From this judgment it will be clear that the view

taken by this Court is no longer good law and for the purpose of considering the discounted price what has to be taken is the date of the Agreement.

4. We now come to the second contention as to whether it was open to the Appropriate Authority to have retained a sum of Rs.14,251/- towards Vendors liability of transfer fees. Apparent consideration is defined under Section 269-2A(b). Under Section 269 UF, the Central Government by way of consideration for such purchase, shall pay an amount equal to the amount of the apparent consideration. The only discount that can be made from the amount of of apparent consideration is as provided in the Chapter itself. This issue had come up for consideration before a learned Division Bench of the Gujarat High Court in Pradip Ramanlal Sheth vs. Union of India & Ors. 2004 ITR 866. In that case the petition was filed to challenge two deductions. The first deduction was towards discounting. The second deduction was towards 50% cost of registration fees and stamp duty. Dealing with the second contention the Court first noted that the definition of 'apparent consideration' does not contemplate any deduction or reduction from the amount of apparent consideration save and except what is provided in the definition clause. The learned Division Bench then noted the deduction to

be made in terms of clause 14 of the Agreement of sale, which included costs such as typing, stamp and registration fees and legal fees to the lawyer which had to be borne in equal share. It was contended on behalf of the Revenue that if the cost of typing and legal fees for execution of the agreement had not been ascertained, atleast. Stamp duty and registration fees were capable of being ascertained on that day as they were fixed under the relevant provisions of the Indian Registration Act and the Bombay Stamp Act. The learned Bench noting the definition of apparent consideration, ruled out deduction of any unascertained amount of consideration as it contemplated only certain specified amount of consideration and that the amount envisaged in Clause 14 cannot be treated to be part, and parcel of the scheme of apparent consideration.

. This judgment came up for consideration before a learned Bench of this Court in Polycon Paper Ltd. vs. Union of India & Others, 253 ITR 182. The question before this Court was about interpretation of applicability of the definition of apparent consideration under Section 269 UA(b) of the Income Tax Act, 1961. The learned Division Bench noted the judgment of the Gujarat High Court in the case of Pradip Ramanlal Sheth (supra) After

examining the various provisions the Division bench observed as under:-

"The liability to pay or not to pay stamp duty and/or registration charges on conveyance is not within the sweep of the definition of "apparent consideration".

Consequently, the appropriate authority had no power, authority or jurisdiction to subtract incidence of stamp duty and registration charges in this case to the tune of Rs.24,97,550/- on the premises that in future if sale takes place, the petitioner would have been out of pocket to that extent. On such premises, such a deduction could not have been effected by the appropriate authority. The said deduction could not have been effected by the appropriate authority. The said deduction was absolutely unwarranted as found hereinabove on the canvass of the statutory scheme of the Act.

The learned Bench quoted with approval the observations in Pradip Ramanlal Sheth (supra) and further noted that this view was sought to be contested on more than two occasions in the Supreme

Court, but the challenge was turned down in Union of India v. Kaumudini Narayan Dalal [2001] 249 ITR 219 (SC).

5. In the instant case what is sought to be deducted is the proportionate amount of transfer fee to be paid to the Society. On behalf of the revenue it is sought to be contended by the learned Counsel that, the judgment of the Division Bench of this Court in Polycon Paper Ltd. (supra) pertained to the payment of registration and stamp duty whereas in our case it is transfer fees to society and as such that judgment is distinguishable. In our opinion that is not the ratio of the judgment of this Court or the Gujarat High Court. The ratio as is apparent from the judgment would be that in so far as "apparent consideration" is concerned what can be deducted are only the amount as statutorily provided under the Section in the Chapter and no other amounts. The amount of transfer fee not being statutory, therefore, could not have been deducted.

. It may also be noted that on payment of the consideration by virtue of Section 269UE a further order is made under sub-section (1) of Section 269UD that such property shall on the date of such order vest in the Central Government. Earlier the Section contained the following words:- "Free from all

encumbrances" by the Finance Act, 1993 w.r.e.f. 17th November, 1992, the same was substituted by "in terms of the agreement for transfer" referred in sub-section (1) of Section 269UC. In the instant case as we have noted the Agreement was of 30th June, 1992 before the amendment by Finance Act, 1993 which came into effect on 17th November, 1992, and the Section as it then stood. Therefore, the result would be that on the order being passed the property vested in the Government free from all encumbrances. The question of the Government paying any transfer fees or for that matter stamp duty or registration fees would not arise. This would be yet another reason to hold that the Government could not have retained any amount towards the transfer fees.

. Once that be the case the petition in so far as the deduction will have to be allowed.

6.(i) For the reasons aforesaid, petition is allowed to the extent that the retention of sum of Rs.14,251/- was without the authority of law. The respondents are, therefore, directed to refund the said amount in favour of the petitioner with simple interest at the rate of 8% per annum from the date of retention till payment.

(ii) We direct the respondents to make the payment

within the period of eight weeks from today, if not paid earlier.

(iii) Rule is made absolute partly in terms aforestated. There shall be no order as to costs.

(J.P. DEVADHAR, J.) (F.I. REBELLO, J.)